



DEPARTMENT OF HOMELAND SECURITY

9110-04-P

Coast Guard

33 CFR Part 117

USCG-2012-0628

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Newport River, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to temporarily change the operating schedule that governs the Carolina Coastal Railroad Bridge, at AIWW mile 203.8, across Newport River in Morehead City, NC. This bridge is presently maintained in the open position except when closure is necessary for train crossings. This change would allow the bridge to remain closed at night so that necessary repairs may be made with the least possible impact to navigation.

DATES: Comments and related material must be received by the Coast Guard on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by docket number USCG-2012-0628 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room  
W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9  
a.m. and 5 p.m., Monday through Friday, except Federal holidays.  
The telephone number is 202-366-9329. To avoid duplication,  
please use only one of these four methods. See the "Public  
Participation and Request for Comments" portion of the  
SUPPLEMENTARY INFORMATION section below for instructions on  
submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on  
this proposed rule, call or e-mail Terrance A. Knowles,  
Environmental Protection Specialist, Fifth Coast Guard District,  
at (757) 398-6587, [terrance.a.knowles@uscg.mil](mailto:terrance.a.knowles@uscg.mil). If you have  
questions on viewing or submitting material to the docket, call  
Renee V. Wright, Program Manager, Docket Operations, telephone  
202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by  
submitting comments and related material. All comments received

will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0628), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2012-0628" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your

comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0628" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

## 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of

an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### 4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

#### B. Regulatory History and Information

The current regulations, under the general requirements set out at 33 CFR 117.5, require that the Carolina Coastal Railroad Bridge, at AIWW mile 203.8, across Newport River in Morehead City NC, shall open promptly and fully for the passage of vessels when a request to open is given. However, the drawbridge is currently maintained in the open to navigation position at all times and closes for passing trains.

In the closed position to vessels, this single-leaf bascule drawbridge has a vertical clearance of 4 feet above mean high water.

#### C. Basis and Purpose

The North Carolina Department of Transportation (NCDOT), who owns and operates this bascule-type railroad bridge, has

requested a temporary change to the existing operating regulations to facilitate repair of existing structural steel, strengthening of the main bascule girders and upgrading the obsolete drive system.

To facilitate the required repair work and to minimize the impact on navigation, from October 1, 2012 to October 1, 2013 the drawbridge would operate as follows: 1) from 5 a.m. to 8:30 p.m., shall be maintained in the open position to vessels and would only be closed for the passage of trains and to perform periodic maintenance; and in the closed position to vessels, from 8:30 p.m. to 5 a.m., with one optional opening provided at 12 a.m. (midnight) for vessels providing advance notice before 4 p.m. on the afternoon before the requested opening.

Vessel traffic along this part of the Atlantic Intracoastal Waterway consists of commercial and pleasure craft including sail boats, fishing boats, and tug and barge traffic, that transit mainly during the daylight hours with the occasional tug and barge traffic at night. The drawbridge is currently maintained in the open to navigation position at all times and closes for passing trains. Consequently, the number of mariners transiting through this section of the waterway is not based on the amount of vessel openings but on the average number of waterway users, which showed that there are fewer vessel

openings at night for mariners, making it a more suitable time to restrict the operation of the drawbridge.

#### D. Discussion of Proposed Rule

The Coast Guard would temporarily revise the operating regulations at 33 CFR 117.821 by adding a new paragraph(c). Paragraph(c) would state from October 1, 2012 to October 1, 2013, the draw of the Carolina Coastal Railroad Bridge shall be maintained in the open position to vessels, from 5 a.m. to 8:30 p.m., and would only be closed for the passage of trains and to perform periodic maintenance; and at night need not open from 8:30 p.m. to 5 a.m., except at 12 a.m. (midnight) for vessels providing advance notice before 4 p.m. on the afternoon before the requested opening.

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3)

of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The proposed temporary changes are expected to have minimal impact on mariners due to the low number of vessels transiting this area at night. Also, a midnight vessel opening would be available each night for vessels requiring an opening provided that advance notice is given by 4 p.m. on the afternoon before the requested opening.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will not have a significant economic impact on a substantial number of small entities because the rule adds navigational restrictions mainly to the movement of vessels during a time when there is less traffic at night. Most commercial traffic will leave and return during the day. The proposed rule would possibly affect small entities such as owners/operators of vessels with limited drawbridge openings



from 8:30 p.m. to 5 a.m. To minimize delays, these vessels can plan their transits in accordance with the proposed opening schedule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, (757)398-6587 or [Terrance.A.Knowles@USCG.mil](mailto:Terrance.A.Knowles@USCG.mil) . The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State,

local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under figure 2-1, paragraph (32)(e), of the Instruction, and environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any

comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

F. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows: Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.821, add temporary paragraph (c) to read as follows:

§117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach.

\* \* \* \* \*

(c) From October 1, 2012 to October 1, 2013, the draw of the Carolina Coastal Railroad Bridge, at mile 203.8, (Newport River) at Morehead City, shall operate as follows:

(1) During the day from 5 a.m. to 8:30 p.m., shall be maintained in the open position to vessels and would only be

closed for the passage of trains and to perform periodic maintenance.

(2) At night need not open 8:30 p.m. to 5 a.m except an opening would be provided at 12 a.m. (midnight) if advance notice is given before 4 p.m. on the afternoon before the requested opening.

Dated: July 27, 2012

STEVEN H. RATTI  
Rear Admiral, U.S. Coast Guard  
Commander, Fifth Coast Guard District

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